

## Department of the Navy, DoD

## § 750.25

(3) *Employees of nonappropriated-fund activities.* Nonappropriated-fund activities are entities established and operated for the benefit of military members and their dependents, and have been judicially determined to be “arms” of the Federal government. These entities operate from self-generated funds, rather than from funds appropriated by Congress. Examples include Navy and Marine Corps Exchanges, officer or enlisted clubs, and recreational services activities. A claim arising out of the act or omission of an employee of a nonappropriated-fund activity not located in a foreign country, acting within the scope of employment, is an act or omission committed by a Federal employee and will be handled in accordance with the FTCA.

(d) *Scope of employment.* “Scope of employment” is defined by the law of respondeat superior (master and servant) of the place where the act or omission occurred. Although 28 U.S.C. 2671 states that acting within the scope of employment means acting in the line of duty, the converse is not always true. For administrative purposes, a Government employee may be found “in the line of duty,” yet not meet the criteria for a finding of “within the scope of employment” under the law of the place where the act or omission occurred.

### § 750.24 Statutory/regulatory authority.

The statutory provisions of the Federal Tort Claims Act (FTCA) are at 28 U.S.C. 1346(b), 2671–2672, and 2674–2680. The Attorney General of the United States has issued regulations on administrative claims filed under the FTCA at 28 CFR part 14. If the provisions of this section and the Attorney General’s regulations conflict, the Attorney General’s regulations prevail.

### § 750.25 Scope of liability.

(a) *Territorial limitations.* The FTCA does not apply to any claim arising in a foreign country. 28 U.S.C. 2680(k) and *Beattie v. United States*, 756 F.2d 91 (D.C. Cir. 1984).

(b) *Exclusions from liability.* Statutes and case law have established cat-

egories of exclusions from FTCA liability.

(1) *Statutory exclusions.* Section 2680 of Title 28 lists claims not cognizable under the FTCA. They include:

(i) Claims based on the exercise or performance of, or the failure to exercise or perform, a discretionary Government function;

(ii) Admiralty claims under 46 U.S.C. 741–752 or 781–790. Claims under the Death on the High Seas Act (46 U.S.C. 761), however, are cognizable under the FTCA. All admiralty claims will be referred to the Judge Advocate General for adjudication. Admiralty claims against the Navy shall be processed under part 752 of this Chapter;

(iii) Claims arising from intentional torts, except those referred to in § 750.23(b);

(iv) Claims arising from the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(2) *Additional claims not payable.* Although not expressly statutorily excepted, the following types of claims shall not be paid under the FTCA:

(i) A claim for personal injury or death of a member of the armed forces of the United States incurred incident to military service or duty. Compare *United States v. Johnson*, 481 U.S. 681 (1987); *Feres v. United States*, 340 U.S. 135 (1950) with *Brooks v. United States*, 337 U.S. 49 (1949);

(ii) Any claim by military personnel or civilian employees of the Navy, paid from appropriated funds, for personal property damage occurring incident to service or Federal employment, cognizable under 31 U.S.C. 3721 and the applicable Personnel Claims Regulations, 32 CFR part 751;

(iii) Any claim by employees of non-appropriated-fund activities for personal property damage occurring incident to Federal employment. These claims will be processed as indicated in 32 CFR part 756;

(iv) Any claim for personal injury or death covered by the Federal Employees’ Compensation Act (5 U.S.C. 8116c);

(v) Any claim for personal injury or death covered by the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 905 and 5 U.S.C. 8171);

## § 750.26

(vi) That portion of any claim for personal injury or property damage, caused by the negligence or fault of a Government contractor, to the extent such contractor may have assumed liability under the terms of the contract (see *United States v. Seckinger*, 397 U.S. 203 (1969) and § 750.23(c)(2);

(vii) Any claim against the Department of the Navy by another Federal agency. Property belonging to the Government is not owned by any one department of the Government. The Government does not reimburse itself for the loss of its own property except where specifically provided for by law; and

(viii) Any claim for damage to a vehicle rented pursuant to travel orders.

### § 750.26 The administrative claim.

(a) *Proper claimant.* See § 750.5 of this part.

(b) *Claim presented by agent or legal representative.* A claim filed by an agent or legal representative will be filed in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of the individual's authority to file a claim on behalf of the claimant.

(c) *Proper claim.* A claim is a notice in writing to the appropriate Federal agency of an incident giving rise to Government liability under the FTCA. It must include a demand for money damages in a definite sum for property damage, personal injury, or death alleged to have occurred by reason of the incident. The Attorney General's regulations specify that the claim be filed on a Standard Form 95 or other written notification of the incident. If a letter or other written notification is used, it is essential that it set forth the same basic information required by Standard Form 95. Failure to do so may result in a determination that the administrative claim is incomplete. A suit may be dismissed on the ground of lack of subject matter jurisdiction based on claimant's failure to present a proper claim as required by 28 U.S.C. 2675(a).

(d) *Presentment.* A claim is deemed presented when received by the Navy in proper form. A claim against another agency, mistakenly addressed to or filed with the Navy shall be transferred

## 32 CFR Ch. VI (7-1-11 Edition)

to the appropriate agency, if ascertainable, or returned to the claimant. A claimant presenting identical claims with more than one agency should identify every agency to which the claim is submitted on every claim form presented. Claims officers shall coordinate with all other affected agencies and ensure a lead agency is designated. 28 CFR 14.2.

### § 750.27 Information and supporting documentation.

(a) *Proper documentation.* Depending on the type of claim, claimants may be required to submit information, as follows:

(1) *Death.* (i) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent;

(ii) Decedent's employment or occupation at time of death, including monthly or yearly earnings and the duration of last employment;

(iii) Full names, addresses, birth dates, relationship, and marital status of the decedent's survivors, including identification of survivors dependent for support upon decedent at the time of death;

(iv) Degree of support provided by decedent to each survivor at time of death;

(v) Decedent's general physical and mental condition before death;

(vi) Itemized bills for medical and burial expenses;

(vii) If damages for pain and suffering are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between injury and death; and,

(viii) Any other evidence or information which may affect the liability of the United States.

(2) *Personal injury.* (i) A written report by attending physician or dentist on the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, any diminished earning capacity. In addition, the claimant